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20134/A3/CB/DM

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Dear Sirs

CONSULTATION ON THE SEFTON PRELIMINARY COMMUNITY INFRASTRUCTURE LEVY JULY 2016

Sefton Council ("the Council") is currently inviting comments on the Preliminary Draft of the Community Infrastructure Levy (CIL), published in June 2016. The CIL charging regime is proposed in order to raise contributions from developments around the Borough to help pay for infrastructure that is needed to support planned development as a whole. The consultation is accompanied by a preliminary Viability Assessment prepared on behalf of the Council by Keppie Massie and WYG. The consultation seeks views of the proposed CIL levy, Regulation 123 List, and proposed Instalments Policy.

These representations have been prepared and submitted by Barton Willmore on behalf of our clients, Countryside Properties and Persimmon Homes; both of whom control large parts of the East Maghull Sustainable Urban Extension to be allocated via Policy MN3 of the emerging Sefton Local Plan. These representations provide our clients comments on the methodology and assumptions used by the Council in preparing the CIL documents, and what this will mean for potential developments within the Borough.

In this representation we provide general comments on proposed charges sought by the Council, the implementation of CIL, and how CIL receipts collected are to be spent. These responses are not intended to be exhaustive but provide an initial commentary on the Council's approach to CIL to inform the preparation of its Draft Charging Schedule and beyond this, submission documents for Examination in Public.

Review of the Sefton Charging Schedule

Proposed Charges

The Council's Preliminary Draft Changing Schedule is set out in a Table which has been published on the Council's website. The Table establishes the proposed CIL rates for residential development, food and drink uses, and large supermarkets. For residential schemes the proposed CIL rate varies based on four defined geographical areas within the Borough, as well as type of development, with three categories identified: New homes (defined as includes Houses in Multiple Occupation); Small Apartment Schemes (14 units or fewer); and large apartment schemes (15 units or more). In all cases the indicated levy is expressed as cost per square meter of net floorspace.



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The following charging rates are proposed by the Council:

- "South Zone" (includes settlements of Litherland and Bootle): for all residential types no charges are proposed;
- "North Zone" (includes Southport): £40 per m² (new housing), £48 per m² (small apartments) and £0 per m² (large apartments);
- "East Zone" (includes the settlements of Maghull, Waddicar and Aintree): £60 per m² (new housing), £20 per m² (small apartments) and £0 per m² (large apartments);
- "Central Zone" (includes the settlements of Formby and Crosby): £125 per m² (new housing), £125 per m² (small apartments) and £15 per m² (large apartments);
- A Borough wide charge of £106 per m² for Food and Drink uses; and
- A Borough wide charge of £91 per m² for Large Supermarkets (stores over 2,787m²).

Proposals for any other use which are not listed above will not subject to a charge through the CIL by the Council.

General Comments

Our clients are concerned with the Council's approach to CIL in Sefton.

Our clients have a number of concerns regarding the Viability Evidence which supports the CIL. In general, our clients believe that the supporting viability evidence is brief and fails to provide sufficient justification for its approach and applied assumptions.

The Viability Assessment relies upon reference being made to the previous assessment which was published in December 2014, and which relates to the submission Local Plan. Beyond the issue of house prices, critical changes to emerging planning policy and market conditions/factors which have occurred since the 2014, are dealt with briefly, if at all by the updated assessment.

Little explanation is provided of how the report examines the viability of CIL through its identified scenarios. The approach to affordable housing is not clear. Whilst tested schemes have been subject to the 30% bed space based affordable housing policy requirement which is outlined within the emerging Sefton Local Plan, it is unclear what mix of housing in terms of size have been tested, and whether this mix is representative of developments which are delivered in Sefton (and identified zone within Sefton). It is also not clear whether the required tenure mix of the emerging affordable housing policy is applied through the viability test.

There is no published further test of the viability of the East Maghull Strategic Site in the Viability Assessment. This is a surprise given the number and extent of changes made by the Council of policy requirements related to the Site, its significant role in the emerging Sefton Local Plan, and findings set out within the Assessment regarding the capacity of the Site to accommodate the identified CIL rate for the wider sub-area.

In addition, our clients consider that there are a number of false/unsubstantiated claims by the Viability Assessment. The claim that phasing of payments will increase residual land value is not true. Land Value will be based on current CIL rates at disposal, which may, as a result of indexation be higher. The assumption that landowners will deliver sites for a reduced land value is based on no evidence.

Given that CIL is non-negotiable, the Council must ensure that proposed CIL charges (together with planning obligations) do not make a development in the borough or a particular zone unattractive to developers. The CIL which is adopted by the Council allow for competitive returns to be made by both landowners and developers. Levy charges should provide for a sufficient level of profit to be made with certainty, taking into account costs of land assembly, planning, legal charges, remediation, construction and labour, together with a sufficient buffer to allow for market change. Failure to fully account for this at this stage could result in lower affordable housing provision, or the stagnation of development across the Borough if levies are set too high.

Our clients are supportive of a varied CIL rate for residential schemes based on viability where this is robustly justified. This approach recognises the difference in market values and viability which is experienced within the boundaries of the authority and will help to prevent the stagnation of development in the Borough's poorer areas.

Though our clients are supportive of variation within CIL rate, it is considered that the draft charge for the Central Area is particularly excessive. Whilst it is acknowledged that house price values in this part of the Borough are generally higher than others, the charge identified appears to exploit this. The approach adopted by the Council may deter future investments in the area resulting in a dampening of delivery rates. Higher value areas may prove to be critical in periods of economic uncertainty where developers seek to sites with better prospects of a return being made, thereby strengthen housing land supply through these periods.

The preliminary charging schedule fails to distinguish between brownfield and greenfield sites despite findings within the evidence base that most brownfield developments within Sefton would not be viable with CIL and planning obligations. The failure to account by the Council could unnecessarily delay or prevent brownfield developments coming forward within the Borough.

East Maghull

Our clients object to the proposed CIL rate of £60 per m² for East Maghull.

As published the preliminary levy and supporting map show that the Council plan to impose a rate of £60 per m² for new housing developed within East Maghull – a rate which reflects that imposed in the wider eastern zone.

Upon review of the supporting viability evidence we can find no up-to-date assessment which tests specifically the viability of the East Maghull SUE to provide for CIL funding in the context of modified emerging policy requirements and obligations (including policy triggers). The absence of this information, in our clients view, represents a significant flaw to the evidence base supporting the consultation.

East Maghull provides a unique development opportunity for the authority, providing the largest single location for the delivery of new housing required for the emerging plan period (12% of overall housing needs) as well as 20ha of new employment land. The Site is required by emerging policy to support the implementation of key new infrastructure including improvements to Junction 1 of the M58 and the North Maghull Railway Station, together with other more site specific pieces of infrastructure through the provision of a new link road and site services. The Site also faces further costs related to ecology, land remediation and flood risk attenuation in order to enable the delivery of housing. All of these factors contrive to provide for a site which is both unique and of critical importance for the Borough. The Site must therefore be considered on its own merits.

The aforementioned characteristics appear to be accepted by the supporting viability assessment which, in relation to East Maghull, concludes;

"Having regard to the specific nature of the development required on this site and the associated policy and planning obligations it is not reflective of typical development in this location and based on the current policy requirements may not be able to support a CIL Levy" (See Paragraph 5.41).

This moves on from observations made in the 2014 Viability Assessment which considers that the development surplus provided from East Maghull was insufficient to provide affordable housing provision in line with proposed policy requirements of 30% (see Paragraph 9.23).

It should be noted the 2014 Viability Assessment was based on a residential scheme of 1,588 dwellings and that the development will now provide for at least 1,400 dwellings – a much reduced number.

It should be also noted that since the latest viability assessment was published in February 2016, the policy requirements of the emerging Sefton Local Plan for East Maghull have evolved further, and now include new elements such as the specific need to provide for at least two dedicated older person housing schemes each comprising of at least 25 dwellings, as well as the expansion of Summerhill

Primary School to become a two form entry school. These additional policy requirements will further test the viability of East Maghull, and its ability to meet any CIL. 010

The conclusions of supporting viability evidence do not appear to have been taken into account by the Council in determining the preliminary levy which is subject to this public consultation. There is no available evidence which assess the viability of East Maghull to support CIL. The absence of information regarding East Maghull raises significant concerns regarding the robustness of the levies proposed. At this point in time there is no evidence to support the proposed implementation of £60 per m² at East Maghull, and, as a result, its implementation cannot be supported by our clients.

In order to address this, our clients consider that an update to the viability assessment is required. This assessment must take into account the full physical constraints of East Maghull, as well as the latest policy and planning obligation requirements as expressed in the modified Sefton Local Plan and emerging East Maghull SPD - including established triggers. The assessment must aim to protect the profit margin for the developers of the Site taking into account its differing landownerships. This profit margin must be commercially attractive even should housing markets experience a significant and unexpected dip. We would encourage, and welcome the author of this report to work closely with our clients when updating their assessment of viability for East Maghull.

As confirmed by paragraph 5.42 of the viability assessment, CIL regulations allow for charging authorities to treat major strategic sites as a separate geographical zone where this is supported by robust evidence on economic viability. Provided this evidence is in place, there is no reason to prevent the Council establishing a differing rate which is applicable solely to East Maghull.

Draft Community Infrastructure Levy Instalments Policy

The Council propose to impose an instalments policy on schemes, or phases of over 150 homes. In this consultation the following three options are proposed:

- Option A: Levy paid in three instalments
 - 1) On commencement;
 - 2) 18 months; and
 - 3) 36 months.

- Option B: Levy paid in three instalments
 - 1) On commencement;
 - 2) 24 months; and
 - 3) 48 months.

- Option C: Levy paid in three instalments
 - 1) On commencement;
 - 2) 30 months; and
 - 3) 60 months.

In broad terms, our clients are supportive of the Council's proposal for the implementation of an instalments policy for the purposes of CIL collection. This approach better reflects and respects development financing and will help protect the viability of development within the Borough.

It is not clear why a threshold of 150 dwellings has been identified by the Council through this policy. Developments smaller in scale experience similar financial pressures to larger schemes. Whilst such sites will not face as large infrastructure requirements, they will often be promoted by smaller outfits, with developments self-financed. It is therefore important that policy requirements respect this, and aim to protect development viability particularly in the earlier stages of the development. Phases of larger schemes may also be smaller than 150 dwellings.

Instalments should not be made based on a set period of time, but instead when a certain amount of dwellings have been sold in each phase. This should be based on a percentage of dwellings which have been sold on site (market only) rather than a specific number to provide for greater certainty. This approach would better protect development viability should construction be subject to delay for reasons beyond the control of the developer e.g. due to weather conditions, availability of labour,

materials or machinery, or the state of the housing market. This could be commencement, and sale of perhaps 30% and 60% of permitted dwellings.

Our clients do not, at this stage, support any of the proposed options, and consider that they must be reworked in light of our comments above.

Regulation 123 List

A Regulation 123 List sets out the range and type of infrastructure that is likely the Council will seek to spend CIL funds upon. It is intended to be a living document which is subject to monitoring and updating.

Beyond reference to specific excluded infrastructure, the regulation 123 list is silent. The consultation webpage directs the reader to the Draft Infrastructure Delivery Plan for reference, however our client believes that specific infrastructure to be funded through CIL must also be set out on the Regulation 123 list.

The lack of any specific project means that monitoring the success of the CIL will be impossible. The Council must identify projects to be funded by CIL to provide the Council, developers and the community with greater certainty over what will be provided, identify specific funding gaps, and provide for greater transparency for what monies collected will be spent on.

CIL regulations prevent local planning authorities from pooling monies collected from more than five developments to deliver a particular piece/type of infrastructure. This has been effective since 1st April 2015. A Regulation 123 List is therefore important so that local planning authorities can source funding strategically and deliver critical parts of infrastructure whilst adhering to regulations. Local Planning Authorities must also have a n understanding of w hat h as a lready b een s e c u r e d t h r o u g h s .106 agreements to ensure compliance with CIL regulations.

Providing a detailed Regulation 123 list will also enable the local planning authority to determine whether the monies likely to be raised through CIL and in adherence to regulations will be sufficient to deliver the required infrastructure, or whether other and additional funding will be required.

Our Client also questions why North Maghull Railway Station and improvements to Junction 1 of the M58 have been specifically emitted from the list. Whilst their provision is connected to the delivery of the East Maghull SUE, their delivery will be of benefit and use to schemes in the wider area. We consider that it only right therefore that CIL payments made from other sites in the surrounding area should also make a contribution to the provision on this new infrastructure. The sourcing of alternative funding from other sites in the area to aid the delivery of these pieces of new infrastructure and help boost the delivery of East Maghull – a Site which is of strategic importance for the success of the Local Plan.

Exceptional Circumstances Policy

Our client notes the absence of an Exceptional Circumstances Policy from the Council's CIL. The provision of such a policy would allow for specific types of development relief from CIL payments and also provide some flexibility for developments with agreed s.106 in place some room for renegotiation should the viability of proposed developments change over time. This would better protect the viability of developments. An exceptional circumstances policy should therefore be included as part of the CIL.

Monitoring and Future Review

The Council must ensure that it regularly monitors the implementation of CIL in Sefton. This will allow the Council to prioritise what infrastructure is funded by CIL. The Council must regularly review its CIL to ensure that the right levy is imposed which protect the viability of developments across the borough, and is the most effective for funding the infrastructure which is necessary to successfully deliver the emerging Local Plan. To allow for effective monitoring the Council must adopt a detailed CIL 123 list.

Conclusions

These representations have been prepared and submitted on behalf of Countryside Properties and Persimmon to consider the Preliminary Draft Charging Schedule of the Sefton Community Infrastructure Levy.

In broad terms our client is concerned by the approach taken by the Council towards CIL in Sefton.

The Viability evidence is not sufficiently detailed, it is unclear what assumptions have been made in the report, what has been tested, and whether scenarios have been considered against the up-to-date policy position of the Council.

The CIL levy does not reflect clear differences in the viability of brownfield and greenfield sites in the borough.

Should the Council choose to impose CIL in Sefton, our clients would be supportive of a varied CIL rate where justified by robust evidence. Our Clients consider the proposed charge in the central part of the borough to be excessive.

Our Client objects to the proposal to impose a levy charge of £60 per m² at East Maghull. There is no up-to-date evidence to justify this charge. The existing evidence base considers that East Maghull should be treated separately from the remainder of the Eastern Zone owing to the unique constraints, overall scale, and policy requirements of the site. This follows on from previous viability evidence that supports the Sefton Local Plan which identifies potential viability issues in providing 30% affordable housing on this site. Considering recent changes made to Policy MN3 of the emerging Local Plan, and changing requirements for the Site, our client considers that there is need for the Council to reassess the viability of the site in detail to determine whether CIL is viable. A charge reflecting this evidence could then be implemented for East Maghull.

Our Client considers that there is a need for infrastructure to be funded by way of CIL to be listed within the 123 Regulation List. This will enable for more effective monitoring, and better shape how monies raised from CIL is spent whilst adhering to CIL regulations.

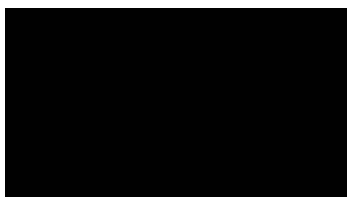
Our Client also considers that improvements to Junction 1 of the M58 and the provision of a railway station at North Maghull should also be funded by other developments in the area as they will be of use and benefit to these sites.

Our Client believes that the Council should include the provision of an exceptional circumstances policy, as this would provide for some flexibility should viability of developments change from the signing of the s.106 agreement.

Our client considers that the close monitoring of the delivery of CIL in Sefton is of utmost importance. In addition, it will be necessary for the Council to conduct regular reviews of the levy imposed on developments and supporting evidence to ensure that development viability is protected.

We would like to take this opportunity to thank the Council for providing us with the opportunity to make comments on the proposed CIL, and would like to be kept informed on future progress made in the production, and adoption of this document.

Yours faithfully



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